

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re:	:	
KAISER ALUMINUM WARRICK, LLC,	:	Docket #1:22-cv-03105-
	:	JGK-KHP
Plaintiff,	:	
- against -	:	
US MAGNESIUM LLC,	:	New York, New York
	:	February 14, 2023
Defendant.	:	<u>TELEPHONE CONFERENCE</u>
	:	

PROCEEDINGS BEFORE  
THE HONORABLE KATHARINE H. PARKER,  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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INDEXE X A M I N A T I O N S

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re- Direct</u>	<u>Re- Cross</u>
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None				
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E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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None				
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PROCEEDINGS

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THE CLERK: -- 22-civil-3105, Kaiser Aluminum

3

Warrick vs. US Magnesium; the Honorable Katharine H.

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Parker, presiding.

5

Beginning with counsel for the plaintiff,  
please make your appearance for the record.

7

MR. ANDREW B. KRATENSTEIN: Good morning, your  
Honor. This is Andrew Kratenstein from McDermott Will &  
Emery. With me on the line, also from my firm, are  
Monica Asher, Tim Cramton and Cindy Seelah (ph).

11

HONORABLE KATHARINE H. PARKER (THE COURT):

12

All right, good afternoon, counsel; this is Judge Cott.

13

THE CLERK: And counsel for the defendant,  
please make your appearance for the record.

15

MS. CAROLYN J. LEDUC: This is Carolyn LeDuc  
appearing on behalf of US Magnesium. With me from my  
office is Kathy Kristofferson (ph).

18

THE COURT: Hello.

19

MR. MARTIN KREZALEK: And this is --

20

THE CLERK: I'm sorry, we have a third party  
that's dialed in, as well.

22

MR. KREZALEK: Yes, sorry about that. Also  
appearing for US Magnesium is Martin Krezalek from Blank  
Rome LLP.

25

THE COURT: Okay, hello.

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PROCEEDINGS

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MR. KREZALEK: Good morning, your Honor.

3

THE CLERK: And we have a third party that dialed in. Please make your appearance.

5

MR. JOSHUA R. WEISS: Good morning. It's Josh Weiss appearing for The Renco Group.

7

THE COURT: Okay. Good morning, everybody. And I apologize for the last-minute change. I'm recovering from COVID. I had hoped I would be testing negative; but, alas, I am not. So, out of an abundance of caution, that's why I changed this to telephonic.

12

So before we get started, just a few preliminaries. Because we're on the phone, I ask that you keep your phones on mute, unless you're speaking, to eliminate background noise, and that you state your name before speaking for clarity of the record.

17

I am making a recording of this conference so that you can order a transcript, if you would like. Also, I remind everyone that the Court's conference line is open to the press and public on a listen-only basis, and that court rules prohibit others from recording and rebroadcasting court proceedings, including this one. Violations of this rule may result in sanctions.

24

Okay, there's a lot of letters that the parties have put in, and I want to address some of the -- at

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PROCEEDINGS

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2 least one of the easy ones first. And then I thought  
3 that we'll address the discovery requests specifically  
4 related to financial statements and such. That is going  
5 to be relevant, as well, to the third-party subpoena  
6 issue.

7 So, first, in terms of the discovery schedule,  
8 I understand the parties are in agreement that an  
9 extension is needed to the discovery schedule through  
10 April 5 -- well, actually, March 1st for the -- of 2024  
11 -- for the filing of dispositive motions. Is that  
12 right, the parties are in agreement on this proposed  
13 schedule?

14 MS. LEDUC: This is Carolyn LeDuc for  
15 defendants. Yes, your Honor, that's correct.

16 MR. KRATENSTEIN: This is Andrew Kratenstein  
17 for the plaintiff. That is correct.

18 THE COURT: Okay, great. So I will grant that  
19 schedule extension, and I'll issue a scheduling order  
20 after this conference reflecting those extensions of the  
21 deadline.

22 MS. LEDUC: Thank you.

23 THE COURT: So next we have the issue  
24 concerning plaintiff's request to compel US Mag to  
25 produce financial statements, general ledger and trial

## 1 PROCEEDINGS

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2 balance for three years preceding the events in  
3 September 2021 and to date. And I want to hear a little  
4 bit more about that.

5 First, I just have a couple of questions about  
6 the underlying facts, to make sure that I fully  
7 understand the issues. As I understand it, the contract  
8 was entered into in 2020 for the supply of magnesium and  
9 that at some point, US Mag's equipment, and  
10 specifically, a key turbine, broke down; and it was  
11 unable to get parts or manpower to repair the turbine  
12 and therefore could not fulfill the contract. Is that  
13 the crux of it; is a turbine the main piece of equipment  
14 that's at issue?

15 MS. LEDUC: Your Honor, if I may? This is  
16 Carolyn LeDuc on behalf of US Magnesium. The jury will  
17 learn that US Mag's manufacturing process is incredibly  
18 complex, mechanically, electrically, chemically, in  
19 every way; and the performance of every upstream piece  
20 of equipment has a material impact on all the downstream  
21 equipment such that if there's a problem upstream, that  
22 can quickly lead to a disaster downstream. And,  
23 unfortunately, that's what happened in this case.  
24 Despite US Mag's very best efforts, where labor and  
25 supplies were not readily available, problems upstream

1 PROCEEDINGS 8  
2 led to catastrophic damage downstream, so it became  
3 eventually a quite comprehensive failure of different  
4 parts of the plant. And that's --

5 THE COURT: What parts of the -- so what was  
6 the catalyst -- what failure was the catalyst the caused  
7 this, and what was the -- in just a summary fashion,  
8 what do you say happened to the equipment?

9 MS. LEDUC: Yeah, there's a turbine generator  
10 unit that went down --

11 THE COURT: Generator unit? I'm sorry, I'm  
12 having a little trouble hearing you.

13 MS. LEDUC: Yeah, I apologize. I'll try to  
14 speak up. There's a turbine generator unit that went  
15 down; and with that part down, with that piece of  
16 equipment down, it led to downstream equipment failures  
17 that eventually damaged the end of the process  
18 electrolytic cells. And that's ultimately what caused  
19 US Mag to cease its production entirely over last  
20 summer, in 2022.

21 THE COURT: I see, so there were other -- how  
22 did -- were there other specific -- is the turbine the  
23 equipment failure for which you're claiming the *force  
majeure*, that's the catalyst of these issues; or was  
25 there some other failing?

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PROCEEDINGS

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MS. LEDUC: The turbine failure was an issue.

3

There was a lightning strike at the US Mag facility causing a subsequent generator problem. The generator and turbine problems caused spray dryer problems. The spray dryer problems --

7

THE COURT: Wait -- wait -- hold on. Stop.

8

The generator problem and then what did you say, stray dryer?

10

MS. LEDUC: Spray dryer. So US Magnesium's process --

12

THE COURT: Oh, spray, spray dryer?

13

MS. LEDUC: Yes. The process begins with evaporating and condensing magnesium chloride from the waters of the Great Salt Lake. And a vital part of that process is basically dehydrating magnesium chloride brine in spray dryers. And the spray dryer equipment was not able to withstand some problems that arose because of the turbine and generator issues. So it just created a downstream, basically dominos falling, unfortunately.

22

THE COURT: Okay. So what was the maintenance issue; was it the maintenance with the turbine generator, or some of this other equipment, as well?

25

MS. LEDUC: Well, your Honor, US Mag's position

1 PROCEEDINGS 10

2 is there wasn't a maintenance issue. US Mag's position  
3 is that the maintenance was properly done. It remains  
4 to be seen what Kaiser alleges is the purported  
5 maintenance failure. But from US Mag's perspective,  
6 there wasn't one.

7 THE COURT: So why did the turbine go down?

8 MS. LEDUC: That's a great question. And the  
9 experts are going to be competing over what the theories  
10 of that are. But there are some turbine blades on the  
11 inside of the turbine that suffered catastrophic damage.  
12 It's the kind of damage that US Mag has never seen in  
13 the course of its history. Our engineers are going to  
14 testify and the mechanic will testify they haven't seen  
15 it before of this nature. But some blading appears to  
16 have been damaged internally. And I'm sure, like I  
17 said, the experts will have competing views on what the  
18 causes of that were.

19 THE COURT: I see. Okay. So it was a unique  
20 type of damage.

21 MS. LEDUC: Yes, yes, your Honor.

22 THE COURT: As I understand it, there were  
23 three turbines, and the two others also were down. Did  
24 they suffer from the same blade damage?

25 MS. LEDUC: No. And I think that's factually

1 PROCEEDINGS 11

2 incorrect. There was one other turbine generator unit  
3 that was down. And the other -- and the third unit was  
4 functional at the time the first turbine generator unit  
5 went down. So units one and three were functional at  
6 that time.

7 THE COURT: And the other one went down because  
8 of why?

9 MS. LEDUC: That was the generator failure.  
10 That turbine was fine, but the 03 generator was what had  
11 issues because of electrical issues. And, again, like I  
12 said, there was a lightning surge at the facility; and,  
13 again, I'm sure the experts will be competing with  
14 opinions on what happened with the generator.

15 THE COURT: I see. Okay. And so the third  
16 unit that continued to function, but it couldn't -- you  
17 couldn't utilize it because of these other downstream  
18 failures?

19 MS. LEDUC: No. The third unit was functional  
20 until there was a generator problem. And with the  
21 generator down, the turbine was still functioning and  
22 producing hot air, but there wasn't the mobility of the  
23 air that would have been there with the turbine  
24 generator fully functional. And so between the first  
25 turbine going down and the third generator going down,

1 PROCEEDINGS 12

2 those two things created this domino effect with  
3 downstream equipment and ultimately the electrolytic  
4 cells.

5 THE COURT: How long did it take for this  
6 complete failure of equipment to occur?

7 MS. LEDUC: Well, the initial turbine went down  
8 in -- had some problems in March of 2021. And then  
9 while US Mag was trying to do everything it could to fix  
10 those problems and address those problems, the generator  
11 on 03 went down. And when the efforts to address those  
12 problems were not successful immediately, US Mag  
13 declared *force majeure*. And so, by the fall of 2021, I  
14 believe late fall, US Mag was able to obtain the parts  
15 and supplies necessary to fix turbine number one; but at  
16 that point, the downstream issues had become a problem.  
17 So once you get into early 2022, there were problems  
18 with the spray dryer units and then eventually by the  
19 summer of 2022, that's when the electrolytic cells had  
20 gone down.

21 THE COURT: Okay. So are you producing any  
22 magnesium at all?

23 MS. LEDUC: At this time, I don't think so,  
24 your Honor.

25 THE COURT: And are you working to address the

1 PROCEEDINGS 13

2 problem so you can get production back up?

3 MS. LEDUC: Yes. It's my understanding that  
4 that's going on on a continuing basis.

5 THE COURT: Okay. All right, thank you. So  
6 now let's go back to the issue of the financial  
7 statements, general ledger and trial balance for three  
8 years preceding September '21 and to date. I'd like to  
9 understand from Kaiser why this information is not only  
10 relevant but proportional to the needs of this case.

11 MR. KRATENSTEIN: Thank you, your Honor. This  
12 is Andrew Kratenstein from McDermott for the plaintiff.  
13 The financial documents are relevant for a couple of  
14 main reasons. First of all, as you just heard Ms. LeDuc  
15 explain, it is true that US Mag's equipment is all  
16 related to each other, and there apparently was, at  
17 least according to them, this domino effect. We  
18 contend, of course, that all of that was foreseeable  
19 because they know how their machines work and they know  
20 if, for example, generators go down, other pieces of  
21 equipment downstream can go down, as well. They also  
22 knew, because they signed this contract -- as you  
23 pointed out, the MSA was signed in October 2020. That  
24 is six months after COVID starts, and they declare *force  
majeure* in September 2021, about 18 months after COVID

1 PROCEEDINGS 14

2 starts. So they do know already at the time they sign  
3 this contract, that there are supply chain and other  
4 issues that may affect the ability to get spare parts,  
5 etc., to repair things. And it's clear from the  
6 documents that they have produced that they did not have  
7 those parts; that they were, as their documents put it,  
8 robbing parts from one turbine to stick into another  
9 turbine in order to repair it.

10 And the question, going out of your question  
11 why are the financial documents relevant to that, well,  
12 one of the issues in this case is why were they in that  
13 position in the first place. Were they making -- they  
14 made, at least from what we've been able to piece  
15 together -- various business decisions that led to the  
16 situation that they were in, for example, building a  
17 lithium plant when they knew that they needed money to  
18 maintain and repair the magnesium plants.

19 THE COURT: Well, wait a minute. Just --

20 MR. KRATENSTEIN: The documents --

21 THE COURT: -- because they didn't fulfill the  
22 magnesium doesn't mean you get to go and basically sit  
23 in the shoes of the board of directors of the company  
24 and decide where it should invest its money or not.  
25 That's what you're --

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PROCEEDINGS

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MR. KRATENSTEIN: Oh, we agree.

3

THE COURT: -- saying.

4

MR. KRATENSTEIN: No, we agree with that.

5

THE COURT: That's what you're saying. So I  
6 guess --

7

MR. KRATENSTEIN: Well --

8

THE COURT: -- why wouldn't the financials just  
9 related to the maintenance of equipment, why wouldn't  
10 the budget -- you know, why wouldn't discovery just on  
11 how the equipment was maintained, how it was supposed to  
12 be maintained, what the cost for that maintenance is --  
13 maintenance and repair and whether the budget met those  
14 needs for that, why isn't that sufficient for your  
15 needs?

16

MR. KRATENSTEIN: Well, a few reasons. We  
17 agree, of course, we're entitled to that. But the  
18 documents that we received so far indicate that they  
19 were delaying or deferring maintenance projects for at  
20 least 10 years. We do have those documents.

21

But then we think that the jury should also be  
22 able to hear, because they're presumably going to say  
23 along the lines of, "Look, we did the best we could with  
24 the resources we had," we think the jury should be  
25 entitled to hear, well, not really; they could have

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PROCEEDINGS

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2 taken resources that they used to build a lithium plant  
3 and put it into magnesium plants. They could have taken  
4 money that they used to distribute up to its owner and  
5 us that to repair the magnesium plants. But they chose  
6 not to do that. And so we think that that's all  
7 relevant, that the jury should see the full picture of  
8 what US Mag was doing. We're not second-guessing what  
9 they did. They made business decisions; they're  
10 entitled to make those business decisions. But, you  
11 know, with all respect, that's not what we're saying.  
12 What we're saying is when you make those business  
13 decisions and then it turns out that you don't have  
14 enough money to repair or maintain your plants, then you  
15 have assumed the risk that what happened in this case, a  
16 catastrophic equipment failure, you assumed the risk  
17 that that was going to happen.

18 THE COURT: So why isn't it sufficient --

19 MR. KRATENSTEIN: And so that's what --

20 THE COURT: -- if you already -- if you already  
21 have information that says that they didn't fund the  
22 cost of maintenance and they delayed, why isn't that  
23 sufficient? Why is it proportional to then explore  
24 every other business decision that the company made?  
25 That's what you're seeking to do.

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PROCEEDINGS

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MR. KRATENSTEIN: Well, in terms of proportion, we're not asking for every document they have about every business decision that they made. We're asking for --

6

THE COURT: Well, your document requests say "all documents." They're not --

8

MR. KRATENSTEIN: We would --

9

THE COURT: They say "all documents." So your requests are very broad. I don't think that they're narrowly tailored.

12

So, again, why is it proportional to explore every single other decision made by the -- financial decision made by the company?

15

MR. KRATENSTEIN: Well, to clarify on the proportionality issue, your Honor, what we're asking for -- and if it wasn't clear, I'll make it clear now -- in terms of the -- and the redaction issue is separate and we'll cover that separately -- but in terms of documents that we're asking them to produce that they haven't already agreed to produce, we are asking for the financial statements, which are a discrete set of documents, and the trial ledger. And so that's what we're asking for. We're not asking for every single email about every decision that they ever made and why

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PROCEEDINGS

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2 they made it. So, you know, just to clarify, we're not  
3 asking for a lot of documents. We want to just see the  
4 basic, the most basic financial documents, which are  
5 your financial statements, which explain how they were  
6 spending money.

7 THE COURT: Okay.

8 MR. KRATENSTEIN: Let me just -- one other  
9 thing -- and this goes to the Renco issue, as well --  
10 whether money was being distributed up to Renco is  
11 relevant for another reason, which gets to whether the  
12 damages limitation can be vitiated. I know you've read  
13 the initial dispute between the parties about whether  
14 the consequential damages limitation in this contract  
15 applies, and that's now before Judge Koeltl. But one of  
16 the issues that the parties are engaged on is whether,  
17 assuming that those apply -- and there's a dispute as to  
18 whether they do -- to our profit, that clause can be  
19 vitiated because of gross negligence, willful misconduct  
20 and/or bad faith. And we would submit that, if money is  
21 being distributed up to the owner of the company at a  
22 time when US Magnesium document say that in substance  
23 the company is starving for capital investments, now you  
24 at least arguably cross the line from negligence into  
25 gross negligence, etc. And we're not just fishing here;

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PROCEEDINGS

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2 I mean, we have emails that say that the company thought  
3 it could be turning a corner financially in 2022, and  
4 the president of the company was asking everyone for a  
5 list of projects to work on while the money is good, and  
6 then one of the other managers says that's really good  
7 news if Ira, who's Ira Renner -- that's the chairman of  
8 Renco -- doesn't, quote, "skim off the money first."

9 So this isn't, you know, just some fishing  
10 expedition where we don't have any basis to believe that  
11 this may have happened. Plus, US Mag itself admitted in  
12 its letter to you in response to our letter on the  
13 financials, that at least in 2016 it did distribute  
14 money up to Renco. Well, that's at a time when --

15 THE COURT: Meaning so in 2016 it paid a  
16 dividend; is that what you're saying?

17 MR. KRATENSTEIN: Well, according to their  
18 letter, it either paid a dividend or some form of  
19 distribution. I'm not sure exactly what form that took.  
20 But, according to the letter that --

21 THE COURT: And why is one dividend in 2016,  
22 which is a number of years prior to the failure of the  
23 turbine, why is that relevant?

24 MR. KRATENSTEIN: Because the documents that we  
25 received also say that for at least a decade before

1 PROCEEDINGS 20  
2 2021, so in other words, since at least 2011, US Mag was  
3 delaying or deferring maintenance projects. So smack in  
4 the middle of that period -- and, by the way, we don't  
5 know if it's just one -- what US Mag's letter said was  
6 we have not -- in substance, distribution has not been  
7 made to Renco since 2016. So, presumably, they made  
8 some in 2016. We don't know how many were made earlier.  
9 But smack in the middle of the period, the decade where  
10 they say they're delaying and deferring maintenance and  
11 redevelopment projects at the plant, they are also  
12 making distributions up to their owner. And we think  
13 that the jury --

14 THE COURT: But isn't it enough that they're  
15 delaying and deferring -- isn't it enough that they're  
16 delaying and deferring maintenance, isn't that enough  
17 for you to say they can't claim *force majeure* because  
18 this is their own fault for delaying and deferring  
19 maintenance? Don't you already have enough?

20 MR. KRATENSTEIN: It may -- I hope so, but of  
21 course, none of us know what will happen at trial. But,  
22 again, I would say that this issue is not only relevant  
23 to negligence, which would vitiate their *force majeure*  
24 declaration because they were negligent; it also goes to  
25 whether any damages limitations can apply, because now I

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PROCEEDINGS

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2 think -- again, when you're crossing from not spending  
3 enough money on plants and equipment -- perhaps because  
4 you don't have it for some reason, whatever the reason  
5 is -- but then the reason, or at least a reason, is,  
6 well, we don't have the money to repair the equipment  
7 because we're making distributions to our owner, now I  
8 think you're, at least again arguably, crossing the line  
9 from negligence to gross negligence and perhaps beyond.  
10 And that goes to the enforceability, not just whether  
11 the *force majeure* is enforceable and valid, but whether  
12 the damages limits that they seek to apply to us even if  
13 the *force majeure* is valid, whether those damages limits  
14 can be applied here.

15

THE COURT: Well, on what basis are you  
asserting that defendant delayed or deferred maintenance  
because it decided instead to pay a dividend?

18

MR. KRATENSTEIN: Well, we don't know because  
we haven't gotten the documents if they delayed or  
deferred maintenance.

21

THE COURT: What explanation have you received  
as to why there was a deferral of maintenance?

23

MR. KRATENSTEIN: Well, I'll read to you -- I  
have a memo; the best I can tell you is a memo that we  
have. It's a memo from November 2021, which is a couple

1 PROCEEDINGS 22  
2 of months after -- a little bit less than actually two  
3 months after the *force majeure* -- about a month after  
4 the *force majeure* was declared. It says in substance  
5 that, "US Mag's been impacted by several significant  
6 business issues over the last 10 years." And it goes on  
7 to say that, "These issues have required the company to  
8 remain very frugal regarding capital investment and  
9 modernizations," and that, "a number of projects have  
10 been deferred or delayed during this economic climate."  
11 And then it goes on to list various project, by the way,  
12 including a project to upgrade the gas turbines that  
13 you've heard about.

14 Then we have the email that I told you about  
15 where we have at least one high-ranking US Mag official  
16 later in time saying when US Mag is thinking things  
17 might turn around, that would be great but, you know,  
18 hopefully the owner won't take the money that we need to  
19 fix the plant.

20 Now, we haven't taken depositions yet. I  
21 intend to, of course, asking about these documents. But  
22 we think we're entitled to get the documents so that we  
23 can ask the US Mag witnesses the question.

24 THE COURT: Okay. I'll hear next from US Mag.

25 MS. LEDUC: Thank you, your Honor. There are

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PROCEEDINGS

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2 several points that I'd like to respond to. First and  
3 foremost, US Mag has never asserted as a defense a lack  
4 of financial resources. And the case cited by Kaiser on  
5 that issue, on the so-called relevance of financial  
6 resources actually says just exactly the contrary.  
7 Financial resources of a defendant has nothing to do  
8 with the efficacy of a *force majeure* defense. It has  
9 nothing to do with it. In fact, the case cited by  
10 Kaiser, the plaintiffs were seeking summary judgment on  
11 the basis that that was the defendant's defense, lack of  
12 money. And the Court said, look, I agree. Lack of  
13 money is not a defense. Lack of money is foreseeable;  
14 it's not a defense. But, plaintiff, I'm not granting  
15 you summary judgment, not because there are questions of  
16 fact and financial ability, but because the plaintiff  
17 hadn't met its burden of proof to show that performance  
18 under the agreement was even physically possible at the  
19 time. That was the basis on which summary judgment was  
20 denied.

21 So the cases -- and I assume -- I'm sure that  
22 Mr. Kratenstein and his team are very competent on  
23 Westlaw and Google and Lexis and every research  
24 database. They haven't come forward with a single case  
25 anywhere in American jurisprudence to support the

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PROCEEDINGS

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2 relevance of a defendant's financial condition with  
3 respect to *force majeure*. It's not out there. And what  
4 is out there -- and we could cite legions of these cases  
5 -- is that financial information is not discoverable.  
6 It's not just irrelevant; it's not discoverable. And  
7 the reason for that, your Honor, is that when we get to  
8 trial, it's not only not relevant; it stays out under  
9 Rule 403. And not only does it stay out under Rule 403,  
10 but courts will often also give jury instructions that  
11 instructs the jury explicitly you are not to take into  
12 account the wealth or poverty of any party in this  
13 action, because it is not relevant. The Courts are  
14 extremely protective of financial information; and  
15 discovery, prejudgment discovery of a defendant's  
16 assets, is completely improper. And that is what's  
17 going on here. Make no mistake; that's what's going on  
18 here.

19 The allegation that money was distributed to  
20 the parent company, totally unfounded. In fact, in  
21 written discovery, US Mag asked Kaiser, you've got this  
22 line in your Complaint that says US Mag's an  
23 instrumentality of Renco. Provide every document you  
24 relied on for making that claim. And Kaiser's response  
25 was that issue is not relevant to this case and not

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PROCEEDINGS

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2 likely to lead to discovery of any relevant evidence.  
3 We could not agree more. US Mag's financial situation,  
4 its relationship with Renco, totally unrelated to the  
5 issues in this case. So your Honor asks isn't it enough  
6 whether the equipment was maintained or not; yes, it is.  
7 In fact, that's the only relevant issue in US Mag's  
8 *force majeure* defense, was the equipment reasonably  
9 maintained, were the equipment failures reasonably  
10 beyond or beyond US Mag's reasonable control -- I think  
11 that's what the language of the contract is. But that's  
12 the issue in the case. So financial information, oh, we  
13 just want to dip our feet into the water of US Mag's  
14 financials, we just want to probe and see whether Ira  
15 Renner took some money away from US Mag. No. It's a  
16 fishing expedition. They're trying to bring Renco into  
17 this suit. Because if they can bring in Renco, maybe  
18 they have some collectability for judgment. That's  
19 what's going on in the mind of Kaiser, and it's  
20 completely improper as a basis for discovery. I'm sure  
21 Mr. Weiss would appreciate addressing that issue, also.

22 THE COURT: Well, did US Mag pay dividends to  
23 Renco?

24 MS. LEDUC: No. In fact, we said in the  
25 pleadings since 2016 there hasn't been any dividend.

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PROCEEDINGS

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2 And, again, I'll defer to Mr. Weiss on that issue  
3 because he's more familiar with that than I am. But the  
4 allegation that Renco is skimming money off the top of  
5 US Mag is completely factually unfounded; there is no  
6 factual evidence in support of that at all.

7 THE COURT: And is US Mag, it's -- is an LLC --  
8 is it taxed as a disregarded entity such that it's a  
9 division of Renco?

10 MS. LEDUC: Maybe Mr. Weiss can answer that.

11 MR. WEISS: Your Honor, this is Josh Weiss.  
12 Yes, US Mag is a disregarded entity for tax purposes.  
13 But it is obviously its own separate corporation with  
14 its separate manager. Ron Thayer, who is the president  
15 of US Magnesium, is also the manager of US Magnesium  
16 LLC.

17 THE COURT: Well, doesn't that make some  
18 difference? If it's a disregarded entity, doesn't that  
19 allow some greater flexibility as to decision-making at  
20 US Mag in terms of influence of Renco?

21 MR. WEISS: Your Honor, with all due respect,  
22 absolutely, positively not. That is -- a disregarded  
23 entity is solely a tax fiction which allows entities  
24 within a structure to be taxed as a single entity. It  
25 has no bearing whatsoever in any jurisprudence anywhere

1 PROCEEDINGS 27  
2 in this country on the basic fundamental principle of  
3 corporate separateness. And corporate separateness is  
4 to be respected unless there are allegations. And  
5 whether it's Delaware or New York law, that there is  
6 some extreme element of control over the operations of  
7 the entity and that the entity is being used for some  
8 form of fraud or injustice.

9 THE COURT: Okay, I'm going to go back to US  
10 Mag. Are there other points you want to make on  
11 proportionality?

12 MS. LEDUC: Well, and let me just address one  
13 issue really quickly before proportionality -- well, I  
14 guess I'll go straight to the proportionality issue.  
15 No, it's not proportionate. And mostly for the reason  
16 is not relevant. I mean, as your Honor asked, wouldn't  
17 it be enough for them to get information about what  
18 money was spent on maintenance. If you think that, you  
19 know, X maintenance should have been done and wasn't  
20 done, fine. But decisions made about where money was  
21 spent instead of that, whether it's employee benefits or  
22 doughnuts for the breakroom, not within the realm of  
23 anything that Kaiser can come in and ask the jury to  
24 second-guess.

25 But the other point that I wanted to make,

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PROCEEDINGS

28

2 Kaiser's counsel said that alleged bad acts on the part  
3 of Renco -- mind you, not even on the part of the  
4 defendant but on the part of Renco's shareholder -- can  
5 somehow be used to eviscerate a consequential damages  
6 waiver in a contract, that is completely erroneous just  
7 as a matter of law. This is UCC case. The  
8 enforceability of a consequential damages waiver is a  
9 matter of statute. It's not a matter of common law;  
10 it's a statute. And the statute is very plain:  
11 consequential damages can be waived unless -- one basis  
12 -- unless there's a showing of unconscionability, which  
13 as your Honor is probably aware, is an extremely high  
14 burden. In this case Kaiser hasn't alleged  
15 unconscionability, it hasn't argued unconscionability.  
16 It's not at issue in the case at all, and it's certainly  
17 not the same standard as bad faith or so-called gross  
18 negligence.

19 And, by the way, the cases that Kaiser has  
20 cited on gross negligence, number one, not UCC cases;  
21 but the one case they added to their briefing, just in  
22 the most recent round, they purported to say, oh, you  
23 know, consequential damages waiver does constitute the  
24 kind of waiver that gross negligence can overcome. If  
25 you read that case, it was a tort case; it wasn't a UCC

1 PROCEEDINGS 29  
2 case. It was a contract case for services, and there  
3 were separate tort claims being litigated. So it's  
4 totally distinguishable from this case. It wasn't  
5 governed by statute as this case is.

6 So that whole idea that you can somehow pin  
7 wrong conduct on US Mag, let alone Renco, let alone  
8 Renco's shareholders to somehow eviscerate a contractual  
9 agreement that consequential damages would be waived is  
10 just not supported under the law.

11 THE COURT: Okay. And Kaiser is not disputing  
12 that the UCC applies, is it?

13 MS. LEDUC: I don't believe so.

14 THE COURT: Okay. In my view, the financial  
15 statements, general ledger and trial balance are not  
16 relevant to this case. And, certainly, even if they  
17 were marginally relevant, they're not proportional to  
18 the needs of the case. So I am going to deny the  
19 request. And I'll issue an order on this after this  
20 conference.

21 Now let's talk about the motion to compel  
22 because some of the items that plaintiff is seeking to  
23 compel production of from Renco relate to these  
24 financials, so my ruling also will apply to that motion  
25 to compel. But I think that there is some separate

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PROCEEDINGS

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2 information. It sounds like there's, from the letters  
3 that were written, it sounds as if US Mag would send  
4 monthly memos, management presentations to Renco about  
5 its operations and so forth. And I imagine that there  
6 would be some number of presentations and potentially  
7 minutes from meetings at Renco that discuss the  
8 particular equipment failures and the decision to  
9 declare a *force majeure* that may not be completely  
10 within the hands of US Mag. So I'd like to hear from,  
11 first from Renco about what unique documents it might  
12 have on these issues.

13 MR. WEISS: Thank you, your Honor. Josh Weiss  
14 from The Renco Group. Your Honor, it is highly unlikely  
15 that Renco has unique documents on this issue. And the  
16 reason is very simple. Renco is an investment holding  
17 company. We own businesses; we do not operate those  
18 businesses. We do not have the technical expertise to  
19 run a magnesium plant. We have no ability to say what  
20 repairs should be done when, what needs to be fixed, how  
21 it needs to be fixed. It's not within our area of  
22 competence. And our model is that we rely on our  
23 management teams to make those decisions. And that's  
24 why Ron Thayer is the manager of US Magnesium LLC, and  
25 he is essentially the chairman of the board, and he

1 PROCEEDINGS 31

2 makes those decisions. And for that reason, the  
3 information that Renco has about operations at US  
4 Magnesium is information that is provided to us by US  
5 Magnesium, as you pointed out, in the form of monthly  
6 management presentations. And I will tell you, for  
7 example, we did not even know that US Mag was declaring  
8 *force majeure* until after it happened.

9 So is it possible that there are unique  
10 documents? Certainly, it's possible. If there are, it  
11 is likely a very small quantity, and it will require  
12 some needle-in-the-haystack type of looking, and that is  
13 why in my correspondence with Mr. Kratenstein I  
14 repeatedly pointed out that overwhelmingly the  
15 information that he is seeking from Renco is the same  
16 information that is in the hands of US Magnesium; and to  
17 require us to search for this needle in the haystack,  
18 which really cumulatively does not, even if it were  
19 there, it's hard to imagine how it adds to the claim  
20 they are bringing or the theory of the claim that they  
21 are bringing, and as such, it is unduly burdensome on  
22 Renco.

23 THE COURT: Why do you say it's needle in the  
24 haystack if it's just -- wouldn't it just be these memos  
25 and minutes where you were discussing when the learning

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PROCEEDINGS

32

2 of the declaration of the *force majeure*? I mean, you  
3 stated you only learned after the fact. There must be  
4 some document you're relying on to make that statement.

5 MR. WEISS: Well, with all due respect, your  
6 Honor, I don't have -- I know for a fact that we don't  
7 have memos that were generated here at Renco about those  
8 issues. We don't have minutes of meetings that are held  
9 with US Magnesium. US Magnesium, as we discussed,  
10 prepares a presentation for a monthly management review  
11 that is presented to us generally in person. And there  
12 are discussions that take place on all topics. I  
13 imagine that -- and, again, those are presentations  
14 prepared by US Mag and provided to us. So perhaps  
15 needle in a haystack wasn't the greatest analogy, but  
16 these are not documents -- the documents you describe  
17 and that Mr. Kratenstein theorizes exist do not in large  
18 measure. Again, it's not to say that there isn't one  
19 here or there or some here or there, but that's, in my  
20 understanding and based on the interviews that I've  
21 conducted of the business folks who interact with the US  
22 Mag folks, that is not our practice.

23 THE COURT: So let me hear from Kaiser. Did  
24 you get these business presentations? Did US Mag  
25 already provide to you the information that it sent up

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PROCEEDINGS

33

2 to Renco about these issues?

3 MR. KRATENSTEIN: Well, I can only tell you  
4 what I know, your Honor. What I know is that until  
5 yesterday we received a grand total of, you know, five  
6 email chains between US Mag and Renco -- yesterday,  
7 literally. I guess, actually technically, it was the  
8 day before yesterday -- I apologize -- the day before  
9 yesterday, we received a production of monthly reports,  
10 heavily redacted monthly reports -- and I know we'll get  
11 to that -- that are reports that were sent from US Mag  
12 to Renco. I don't know if that's a universe, I don't  
13 know if that's a universe of documents that were sent  
14 between US Mag and Renco.

15 But our position on this is a couple of things.  
16 Number one -- and we do find it somewhat inconceivable  
17 that, given that US Mag asserts that Renco has invested  
18 hundreds of millions in US Mag -- and, obviously, as you  
19 just heard, it owns US Mag, it's a disregarded entity  
20 for tax purposes -- that there aren't nonduplicative  
21 documents within Renco, internal communications, talking  
22 about this catastrophic, what everybody agrees is a  
23 catastrophic event at US Mag that you heard at the top  
24 of this call has led to the complete cessation of  
25 magnesium production for months, you know, that there

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PROCEEDINGS

34

2 are no emails about this internally, there are no emails  
3 -- I mean, it's just -- you know you can imagine we were  
4 kind of surprised to hear that.

5                   And I'm also surprised to hear -- and you heard  
6 just now Mr. Weiss say, well, it's highly unlikely we  
7 have nonduplicative documents. Well, have you looked?  
8 Because we agreed in December that they were going to  
9 run search terms over their documents, the typical thing  
10 we all do in litigation, particularly by the way,  
11 they're not just some nonparty; they own the defendant.  
12 So they agreed to run search terms, and the only reason  
13 I brought this to your Honor is because, candidly, we  
14 believed they were giving us the runaround because they  
15 haven't produced any documents and we're now in the  
16 middle of February.

17                   So, you know, we think we're entitled to the  
18 documents. And, by the way, that's even -- even if they  
19 are, quote, "duplicative." As I'm sure your Honor  
20 knows, duplicative documents, communications between two  
21 parties or two nonparties or a nonparty and a party, get  
22 produced all the time. And there's case law -- the case  
23 law's actually cited -- we cited it for Mr. Weiss in the  
24 letters that I sent to him that are attached to his  
25 letter to the Court saying just because an email or

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PROCEEDINGS

35

2 something may be duplicative doesn't mean you don't have  
3 to produce it. That gets produced all the time.

4 And in this case, that's important for a couple  
5 of reasons. Number one, presumably, US Mag is sharing  
6 with Renco what US Mag considers important information.  
7 So the fact that Renco has it is itself relevant. And,  
8 second, we have had significant issues with US Mag's  
9 production. I won't bore you with all the details. But  
10 one of the issues has been, for example, they have not  
11 produced back to us all of the communications between US  
12 Mag and Kaiser that we have produced. And so the best  
13 way to make sure that you're getting both sides of a  
14 conversation is to get both sides of the conversation.  
15 And that's all we're asking, and we don't think it's  
16 unduly burdensome. We don't think -- you know, we had  
17 been told, well, there's hardly anything. Well, if  
18 there's hardly anything, run the search terms and  
19 produce the documents.

20 THE COURT: Okay, so in terms of the subpoena,  
21 I think there are things that the parent company may  
22 have that are unique that bear on information about the  
23 maintenance and upkeep or deferral of maintenance and  
24 repair of the equipment that failed, as well as the  
25 actual failure and the declaration to declare force

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PROCEEDINGS

36

2 *majeure* with respect to this and the cessation of the  
3 magnesium as a result of these catastrophic failures.  
4 So what I'm going to direct the parties to do is to meet  
5 and confer to narrow the requests and objections. And  
6 what I'm going to ask you to do is to write me a letter  
7 in two weeks and let me know how you've narrowed down  
8 the dispute, and then I will address those issues. But  
9 I think you can do a little bit more work, and I think  
10 that there are some things that Renco has and can  
11 produce that would be relevant. So I want you to meet  
12 and confer over the next two weeks and then send me a  
13 joint letter with what are the narrowed-down disputes.

14 MR. WEISS: Understood, your Honor. Thank you.

15 THE COURT: Now, in terms of the redactions,  
16 let me understand that nature of the redactions, first  
17 from Kaiser's perspective. You said you received copies  
18 of these monthly management reports. Do the unredacted  
19 portions concern investment in and repair and  
20 maintenance of these various machinery, manpower needed  
21 to fix it and those related issues?

22 MR. KRATENSTEIN: If I understand your Honor's  
23 question, I think the answer is yes and no. So there is  
24 certainly some unredacted information about that. But  
25 there also appears to be redacted information about

1 PROCEEDINGS 37  
2 that, too. Just to give one example -- and, again, the  
3 redactions are heavy, so it's hard to tell exactly  
4 what's been redacted. But it appears, for example, that  
5 they redacted whether their capital spending was up or  
6 down, you know, in a particular month and by how much.  
7 Well, that's obviously relevant; capital spending goes  
8 to maintenance and repairs.

9 The other items that are redacted -- it's very  
10 hard for me to tell -- there are just headings about the  
11 general topics, but then, you know, giant blocks of  
12 redactions all over the document. So, as you know, we  
13 contend they shouldn't be redacting anything under the  
14 case law, but even what they have redacted appears to be  
15 relevant.

16 THE COURT: So, normally if there's a  
17 protective order in place, redactions are not going to  
18 be appropriate unless there's something, you know,  
19 particularly sensitive. And I'd like to understand US  
20 Mag's position here, because you do have an option, too,  
21 of marking some things Attorney's Eyes Only, as opposed  
22 to just redacting. So there's multiple protections you  
23 can have under a protective order that wouldn't involve  
24 redacting.

25 MS. LEDUC: This is Carolyn LeDuc. Thank you,

1 PROCEEDINGS 38

2 your Honor. Let me just address that question. So  
3 there's three kinds of information that's been redacted  
4 in general. It's financial information, so it's income,  
5 loss, balance sheets, those kinds of things;  
6 environmental information; and information about parts  
7 of US Mag's operations that are unrelated to the  
8 production of magnesium. So those three categories of  
9 information. But what you'll discover, your Honor, is  
10 that Kaiser's arguments for so-called relevance for all  
11 of these issues go back to the issue of US Mag's  
12 decisions about its money. So environmental  
13 information, they want to know that because the theory  
14 is well, maybe US Mag was spending money on remediation  
15 or maybe US Mag had to settle some environmental  
16 lawsuit, and we should be able to tell the jury that US  
17 Mag spent money on the environmental issues rather than  
18 equipment maintenance. No, that's not a basis for  
19 relevance. And then information about parts of US Mag's  
20 operations unrelated to magnesium, well, as you heard,  
21 US Mag's producing lithium, and jeez, we should be able  
22 to see everything that US Mag did on the lithium side of  
23 the facility so that we can show that US Mag shouldn't  
24 have been spending money on lithium; it should have been  
25 spending it on magnesium. That gets back into all the

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PROCEEDINGS

39

2 issues we were just addressing on financial information.

3 So if US Mag's monthly management reports are  
4 sending Renco, as they were, financial information that  
5 we just talked about the irrelevance of, the prejudicial  
6 nature of the -- it doesn't come in, it's prejudicial,  
7 it's going to be abused and misused in this case to  
8 create this case into something it is not about and  
9 should not be about and cannot be about as a matter of  
10 law. The question is is Kaiser just going to get that  
11 information, anyway. Our position has been it should be  
12 redacted. You know, it sounds crazy, your Honor, but  
13 there could not be any hotter -- well, this part of it  
14 doesn't sound crazy -- there could not be any hotter,  
15 more controversial issue right now than environmental  
16 issues. And Kaiser, I think, is really hoping it can  
17 fish through the environmental information and find some  
18 way to turn this case into a referendum on US Mag's  
19 environmental record. Frankly, your Honor, Kaiser is an  
20 aluminum facility, US Mag is a magnesium facility.  
21 These companies deal with environmental issues. That is  
22 an issue that could be extremely hot button for the  
23 jury. Crazy as it sounds, we've seen other parties try  
24 to do the same thing in other cases. It's frankly  
25 astonishing how far these parties will go to try to get

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PROCEEDINGS

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2 environmental issues before a Court because they're so  
3 prejudicial in the minds of modern juries.

4 And so it's really beyond dispute environmental  
5 issues are not relevant to the case. Kaiser hasn't  
6 propounded a single document request addressing  
7 environmental issues or the lithium production, none of  
8 that. So why are we going to then hand Kaiser all of  
9 the information that we just disputed the relevance of  
10 in management reports when it's just -- it's not  
11 relevant? And so what you see in the cases that address  
12 the redactions is Courts will just go through and say,  
13 all right, this is not relevant, it can stay redacted;  
14 and this part, I find it relevant, it can come in.

15 So we've got monthly management reports that  
16 were delivered to Renco, we've got engineering reports  
17 that deal with partly magnesium but partly lithium.  
18 They don't need the lithium information. They're not  
19 going to turn the information about lithium into some  
20 basis again for second-guessing US Mag's financial  
21 decisions and (indiscernible) the only conceivable basis  
22 on which anything about lithium or the environment could  
23 even be stretched into this case. And it shouldn't be  
24 as a matter of law. It's prejudicial as well as  
25 irrelevant.

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PROCEEDINGS

41

2 So it's not just a question of, you know, can  
3 we keep it to Attorney's Eyes Only; it's frankly the  
4 attorneys who are going to try to abuse this  
5 information. So that's US Mag's position. The  
6 information's just not relevant. And handing it to  
7 Kaiser in these monthly management reports is just  
8 inviting them to do all of the things that Courts rankle  
9 at over the financial issues, because it's all -- it all  
10 boils down to how US Mag spent its money, all of these  
11 issues.

12 THE COURT: Have you produced just the  
13 maintenance budget?

14 MS. LEDUC: Um --

15 THE COURT: Is that segregated, or just the  
16 spending on maintenance and repair?

17 MS. LEDUC: Yeah, I don't -- that's not the  
18 kind of thing we would have redacted. Information that  
19 was put into capital expenditures for magnesium, I think  
20 that information was produced unredacted. And if it  
21 deals with magnesium, fine, it comes in. But when  
22 counsel for Kaiser talks about capital spending being an  
23 issue that's clearly relevant, it's not. What US Mag  
24 spent on its capital expenditures for parts of the plant  
25 having nothing to do with magnesium is not relevant.

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PROCEEDINGS

42

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THE COURT: How many of these reports are there

that are redacted?

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MS. LEDUC: I think there are a few hundred --

they're monthly management reports, so they're delivered

once a month. And I believe there were several years of

reports that Kaiser requested. So it's going to be --

it's going to be a few hundred pages of documents.

9

THE COURT: I'd like to see a sample of the  
10 unredacted with the redacted portions highlighted. Can  
11 you submit three sample reports to me?

12

MS. LEDUC: Yes.

13

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THE COURT: And what I'm going to ask is I'm

going to ask Kaiser to identify the three to be

submitted to me *in camera*. So Kaiser has the redacted

ones. So, Kaiser, by tomorrow identify the three

reports that you want submitted to me *in camera*. And

then by Friday I want US Mag to email me for *in camera*

review the unredacted ones identified by Kaiser. And

obviously, that will be *ex parte, in camera*. And I will

take a look at what the redactions are.

22

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MS. LEDUC: Okay. And just to clarify, your

Honor, there are additional documents that have been

redacted, but they've been redacted for the same

reasons. The monthly management reports I think should

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PROCEEDINGS

43

2 be fairly simple to analyze because they follow the same  
3 pattern. If you've seen one, you've seen the template  
4 for all of them. They're basically the same information  
5 but, you know, updated each month.

6 The other main packet of information or type of  
7 documents that are at issue on the redaction is  
8 engineering reports. They likewise follow consistent  
9 patterns such that if you've seen one, you kind of know  
10 what all of them look like. They contain some  
11 information relevant to US Mag's magnesium production,  
12 but some information relevant to lithium production,  
13 which we would maintain is not relevant.

14 THE COURT: Well, Kaiser can designate either a  
15 management report or an engineering report.

16 MS. LEDUC: Okay.

17 THE COURT: So three of them, and I'll take a  
18 look. But since Kaiser's objecting, it can identify the  
19 reports it wants me to take a look at. And --

20 MS. LEDUC: Okay.

21 MR. KREZALEK: Your Honor --

22 THE COURT: Go ahead.

23 MR. KRATENSTEIN: Sorry, your Honor. No,  
24 sorry, your Honor. (indiscernible). I just wanted to -  
25 - may I respond briefly? I appreciate your order and

1 PROCEEDINGS

44

2 will, of course, comply, but --

3 THE COURT: Sure.

4 MR. KRATENSTEIN: Oh, thank you. What you just  
5 heard from Ms. LeDuc sounded like an argument on a  
6 motion in limine. You know, if they want to argue  
7 before the trial that there are certain things that are  
8 off limits before the jury, you know, they'll have every  
9 opportunity to do that.

10 THE COURT: Oh, sure. I -- the evidentiary  
11 rules are not pertinent to what is discoverable.

12 Relevance is broad under Rule 26. So I understand that  
13 point.

14 MR. KRATENSTEIN: Great. And, you know, and I  
15 know you also know the rules. I mean, there's really no  
16 competit -- we're not competitors. This isn't personal  
17 information. As you know, it's highly unusual to redact  
18 documents, particularly this extensively.

19 And, by the way, just last thing and then I'll  
20 stop. You know, we've produced a lot of documents in  
21 this case, Kaiser has. We've produced, you know,  
22 actually multiples more than US Mag has. We haven't  
23 redacted a single document for relevancy. And there is  
24 tons of information in these documents that has nothing  
25 to do with this case, because we know it's improper to

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PROCEEDINGS

45

2 do that. And so, you know, again, we think that the law  
3 is very clear on this -- we know you're familiar with it  
4 -- that there are really very limited circumstances when  
5 they can redact this type of information. And it's  
6 improper. So, anyway, that's all I wanted to say on  
7 that topic.

8 THE COURT: Okay. Thank you. I think I  
9 understand the parties' arguments, and I'll just take a  
10 look at these redactions.

11 Then, finally, there's the issue of the motion  
12 to stay discovery on consequential damages. What I'm  
13 going to do is I'm going to schedule another conference  
14 within the next 30 days. I am not inclined to stay  
15 discovery on consequential damages to the extent that  
16 doing so would require witnesses to be redeposed unless  
17 you're saying that the witnesses would have more than  
18 one day of deposition anyway and that the information is  
19 clearly discrete. So I want to -- what I'd like to do  
20 is to understand a little bit better what the overlap is  
21 because I don't want to have inefficiencies in  
22 discovery. And if redepositions can be avoided, there  
23 may be certain discovery that not -- that can be delayed  
24 rather than stayed pending a ruling on the motion to  
25 dismiss. So I want to understand what really is

1 PROCEEDINGS 46

2 overlapping and what really would be discrete on the  
3 consequential damages issue. And I'm not sure that's  
4 completely fleshed out in the letters that I read that  
5 you submitted. So I want you to meet and confer about  
6 what is overlapping and what is discrete and what could  
7 be reasonably delayed given the extension in the  
8 discovery schedule anyway and what really is more  
9 efficient just to deal with now even if at the end of  
10 the day the motion to dismiss is granted. Okay?

11 MS. LEDUC: And, your Honor, this is Carolyn  
12 LeDuc, would you like us to then submit a letter? What  
13 would you like us to do in terms of --

14 THE COURT: Yes. I want you to meet and confer  
15 on that. And then I'll look at the calendar and  
16 schedule another conference. And you should submit a  
17 joint letter on this issue a week prior to that  
18 conference. And if you have competing proposals, you  
19 can just put it in two separate sections. It doesn't --  
20 I'll give you each a chance to, each side a chance to  
21 talk at the conference. Okay? It's not meant to be a  
22 full briefing.

23 MS. LEDUC: Thank you.

24 THE CLERK: Judge?

25 THE COURT: Yes?

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PROCEEDINGS

47

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3 THE CLERK: I just want to remind you you also  
4 have a conference scheduled already for March 29th at  
11 a.m.

5

6 THE COURT: Oh, fantastic. Okay. Good. So  
everybody has that on their calendar?

7

THE CLERK: That's an in-person conference.

8

9 THE COURT: Okay. Okay, good. So -- hold on  
here; let me just look at the schedule.

10

11 THE CLERK: We can extend that for more time  
that day, as well.

12

(Clerk and Court discuss scheduling time.)

13

14 THE COURT: Because what I want to really  
understand is what are the depositions happening. I  
15 want you all to talk about the schedule for depositions,  
16 get some deposition dates out on the calendar. And each  
17 side should think through what are the topics that those  
18 witnesses will be dealing with. And be prepared to  
19 discuss all of that at the March conference. Okay?

20

MS. LEDUC: Will do. Thank you, your Honor.

21

THE COURT: So we'll just --

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MR. KRATENSTEIN: Thank you, your Honor.

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24 THE COURT: Just submit the joint letter on  
that a week in advance of that conference.

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Okay. I have another conference, so we have to

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PROCEEDINGS

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adjourn. And I'll look forward to your letters. Thank  
3 you.

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(Whereupon, the matter is recessed.)

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C E R T I F I C A T E

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4 I, Carole Ludwig, certify that the foregoing  
5 transcript of proceedings in the case of Kaiser Aluminum  
6 Warrick, LLC v. US Magnesium LLC, Docket #22-cv-03105-  
7 JGK-KHP, was prepared using digital transcription  
8 software and is a true and accurate record of the  
9 proceedings.

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Signature Carole Ludwig

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Carole Ludwig

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Date: February 16, 2023

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